

# MAINE STATE LEGISLATURE

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THE  
**REVISED STATUTES**

OF THE  
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

**THE CONSTITUTIONS**

OF THE

*United States and of the State of Maine,*

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

**APPENDIX.**

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PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

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**Augusta:**

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1841.

## CHAPTER 88.

CHAP. 88.

## OF PARENTS AND CHILDREN.

SECT. 1. Property of minor children to be applied to their support, in certain cases.

2. Guardian by will.

SECT. 3. Illegitimate child may be bound by the mother.

4. Limitation of a mother's power to bind children.

SECTION 1. If any minor, who has a father living, has property, which is sufficient for his maintenance and education, in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of his own property, in whole or in part; and the charges therefor may be allowed accordingly, in the settlement of the guardian's account.

SECT. 2. Every father may, by his last will, appoint a guardian for his minor children, until the age of fourteen respectively.

SECT. 3. The mother of an illegitimate child shall have power to bind him, during the life time of the putative father, as well as after his decease.

SECT. 4. The power of the mother to bind legitimate, or illegitimate children, shall cease, in case of her subsequent marriage; and shall not be exercised during the continuance of such marriage, either by herself or her husband.

Property of minor children to be applied to their support, in certain cases.  
2 Mass. 113,  
415.  
4 Mass. 97.

Guardian by will.

Illegitimate child may be bound by the mother.  
2 Mass. 109.

Limitation of a mother's power, to bind children.  
4 Mass. 675.

## CHAPTER 89.

## OF DIVORCE AND DISSOLUTION OF MARRIAGES.

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31. Either party may have a trial by jury.

32. Court may grant a new trial.

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Certain marriages void, without a divorce.  
1821, 71, § 3.  
4 Pick. 32.  
8 Pick. 433.

Causes for divorce from bond of matrimony.

Adultery.  
1821, 71, § 3.  
6 Mass. 147.  
3 Greenl. 136.  
4 Greenl. 100, 326.

Impotency.  
1821, 71, § 3.  
Desertion for five years.  
1829, 440, § 1.  
1830, 456.  
6 Greenl. 210.

Joining the shakers.  
1829, 440, § 1.  
1830, 456.

Sentence to prison for five years.  
1829, 440, § 1.  
1830, 450.

Fraud in obtaining consent.  
1835, 177, § 1.

Divorce of the other party.  
1834, 116, § 2.

Habitual drunkenness.  
1838, 342.

Issue not barred

SECTION 1. All marriages prohibited by law, on account of consanguinity or affinity between the parties, or for the cause, that either of the parties has a former husband or wife then living, except as hereinafter provided, or was an idiot or insane, when the marriage was solemnized, and all marriages between a white person and a negro, indian or mulatto, shall, if solemnized in this state, be absolutely void, without any decree of divorce or other legal process; and the sentence of either party, to imprisonment for life in the state prison, and confinement under such sentence, shall dissolve the bond of matrimony, without any legal process.

SECT. 2. A divorce may be decreed from the bond of matrimony, in the following cases, and for the following reasons:

*First.* For the cause of adultery committed by either of the parties, within or without this state, provided, they have not cohabited together as husband and wife, after the commission of the crime was well known to the libellant;

*Second.* For impotency in either of the parties, existing at the time of the marriage;

*Third.* Where either of the parties has deserted, or shall desert the other, wilfully and without reasonable cause, for the term of five successive years, and without consent or collusion of the parties, or any intention, on the part of the party deserted, thereby to procure cause for a divorce;

*Fourth.* Where either of the parties shall join and continue with the society called shakers, for the term aforesaid, separate from the other party, without consent or collusion, or an intention to enable the other party thereby to procure cause of divorce;

*Fifth.* Where either of the parties shall be sentenced to confinement and hard labor in a state prison or penitentiary, in any of the United States, for said term of five years; provided, that in neither of the last three cases, shall a divorce be granted on the application of the party deserting, joining said society, or confined in prison as aforesaid; nor, on application of either, when both parties shall have cohabited together, within the term of five years, next before the filing of the libel, or between that time and the time of the trial, or decision on the same;

*Sixth.* Where the consent of one of the parties to the marriage was obtained, by the gross and deliberate fraud or false pretences, practised by the other, a divorce may be granted on the application of the *other* [former]; provided the parties have not cohabited, as husband and wife, after such fraud was known to the party, thus deceived;

*Seventh.* In all cases, where one party has been, or shall be, divorced from the bond of matrimony, the court granting the same, may, on application of the other party, grant a like divorce, on such terms and conditions as such court, in the exercise of a sound discretion, may judge reasonable;

*Eighth.* Where either of the parties is, or shall become, a confirmed, habitual and common drunkard, and shall so continue for the term of three years, thereby incapacitating him or herself, from making suitable provision for, and taking proper care of the family.

SECT. 3. No *decree* [divorce] from the bond of matrimony for

any of the causes, mentioned in the preceding section, shall bar the issue of such marriage from inheriting; but the question of the right of such issue shall remain unaffected by any thing in this chapter.

SECT. 4. All questions of divorce, dissolution of marriage, and alimony shall be heard and tried by the supreme judicial court held in the county, in which the parties or one of them live; and any one of the justices thereof is empowered to decide such questions.

SECT. 5. Any person, aggrieved at the opinion of such justice, upon a matter of law, may file his exceptions to the same, and have a full hearing thereupon before a majority of the court, as provided in civil actions.

SECT. 6. A divorce from bed and board may be granted, for the cause of extreme cruelty, in either of the parties; or whenever the husband shall grossly or wantonly, and cruelly, neglect or refuse to provide suitable maintenance for his wife, he being of sufficient ability, though without deserting her.

SECT. 7. When it shall appear, that the adultery or cruelty, complained of, is matter of collusion between the parties, and for the purpose of procuring a divorce, or if both parties have been guilty of adultery, no divorce shall be decreed.

SECT. 8. The party complaining may file his or her libel in the office of the clerk of the court, setting forth, as particularly as can be done, the causes of complaint, making a distinct count for each alleged cause of divorce, which shall be signed by the party complaining; and shall cause the other party, if in this state, to be served with an attested copy of the same, and with a summons to be at the court; and such service to be made fourteen days at least, before its session, where the trial is to be had.

SECT. 9. If the party, complained of, be not in the state, the libel may be presented to the court in session in any county; and such court shall order what notice shall be given to the other party, and the manner of giving it, returnable in the county where the libelant resides.

SECT. 10. When such libel shall be filed, by the wife, in the clerk's office, or presented to the court in session, praying for a divorce from bed and board, and she shall cause legal notice to be served on him, all his lands in the state shall be thereby bound to answer the order and judgment of court, in case a divorce should be decreed upon her libel; provided, such lien be prayed for in the libel.

SECT. 11. The libel may, in all cases, at the option of the libelant, be presented in the first instance to the court, as provided in the ninth section, and notice ordered and given as therein mentioned.

SECT. 12. Where the libelant has left the county, in which the parties have lived together; the adverse party still living in the same county, the libel shall be heard and tried in the court held for that county; and, if either party has removed from the state, and the other be resident in this state, the libel shall be heard and tried in the county, where such other party resides.

SECT. 13. No divorce shall be decreed for any cause, if the parties never lived together, as husband and wife, in this state; nor for any cause, which shall have occurred in any other state or coun-

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from inheriting, in these cases.

1829, 440, § 1.

Questions of divorce, where tried.

1821, 71, § 1.

1838, 310.

2 Mass. 167.

3 Mass. 184.

Exceptions may be filed.

1838, 310.

Causes for divorce from bed and board.

1821, 71, § 3.

14 Pick. 181.

Collusion between the parties.

1821, 71, § 4.

6 Mass. 276.

3 Greenl. 398.

3 Pick. 299.

Manner of filing libel, and service.

1821, 71, § 2.

3 Mass. 159,

391.

5 Mass. 197,

6 Mass. 26.

7 Mass. 502.

9 Mass. 422.

Notice, if libel be out of the state.

1821, 71, § 2.

Lien upon the lands of the husband, libel-ee.

1821, 71, § 5.

Libel may be presented to the court, before notice.

Where filed, if one party have left the county or state.

9 Greenl. 140.

Libel, when not sustained.

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try, unless the parties had, before such cause occurred, lived together as husband and wife, in this state.

Same subject.  
3 Mass. 158.  
6 Mass. 263.

SECT. 14. No divorce shall be decreed for any cause, which occurred in any other state or country, unless one of the parties was then living in this state; provided, that nothing in this or the preceding sections shall be construed to include cases of desertion by either of the parties.

Provision for  
wife, on divorce  
for impotency.  
1821, 71, § 5.

SECT. 15. When a divorce shall be decreed, for the impotence of either of the parties, the wife shall have all her lands restored to her; and the court may enter a judgment for all or such part of her personal estate, which had come to her husband's hands by virtue of the marriage, or the value thereof, as the court may judge to be reasonable; and may make use of such process, as may be necessary, to compel the husband to disclose on oath, what personal estate of the wife had so come to his hands, how it had been disposed of, and how much remained in his hands, at the time of divorce.

Provision, when  
divorced, on her  
complaint, for  
other causes.  
1821, 71, § 5.  
1829, 440, § 2.  
10 Mass. 260.  
13 Mass. 231.  
14 Mass. 219.  
5 Pick. 427, 428,  
461.

SECT. 16. Where a divorce is granted to the wife, on the libel of the wife, for any other of the causes mentioned in the second section of this chapter, she shall be entitled to her dower in the husband's estate, to be assigned to her in the same manner, as though her husband were dead; and the real estate, which her husband held in her right, the court may assign to the wife, for her own use; and also the personal estate, which the husband received, in virtue of the marriage, or such part thereof, as they shall deem reasonable; or a sum of money, equal in value to the whole of the same; or to such part thereof, as shall be judged proper.

Same subject.  
1821, 71, § 5.

SECT. 17. If such personal estate, so assigned, or its value, together with her dower in the husband's real estate, should be insufficient for her reasonable and comfortable support, the court may allow her alimony, out of her husband's estate, so long as she remains unmarried, as is provided in the nineteenth section following.

Provisions, in  
case of divorce  
for adultery of  
the wife.  
1821, 71, § 5.  
1829, 440, § 2.

SECT. 18. Where the divorce shall be decreed, on the libel of the husband, for adultery committed by the wife, the husband shall hold her personal estate forever, and her real estate, of which she was seized during coverture, during his natural life, if they have had a child born alive during the marriage; otherwise, during her natural life only, if he should survive her; but the court may allow her for her subsistence, so much of her personal or real estate, as they shall judge to be necessary.

Proceedings, in  
case of divorce  
from bed and  
board.  
1821, 71, § 5.  
1 Mass. 341.  
2 Pick. 316.  
5 Pick. 461.  
15 Mass. 196.

SECT. 19. Whenever a divorce shall be decreed, from bed and board, for the extreme cruelty of the husband, or his grossly or wantonly, and cruelly, neglecting or refusing to provide suitable maintenance for her, he being of sufficient ability to do it, if there be no issue living, the wife shall be restored to all her lands, and be allowed, out of his personal estate, such alimony, as the court shall think reasonable, having regard to the personal property, that came to the husband by the marriage, and his ability; but, if there be issue living, at the time of the divorce, then the court may decree, what they may judge right, in respect to the restoration of property, or granting alimony; and such decree may be altered, from time to

time, by the court, as may be found just and reasonable; and the court, in the above case, to effectuate any purpose aforesaid, may order the real estate of the husband, or any part of it, or of the rents and profits, to be assigned and set out to the wife for and during her life, and employ such legal process, as they may deem necessary, to carry the decree into execution.

SECT. 20. If a divorce from bed and board is decreed, for the cruelty of the wife, whether there be issue; or not, at the time of the divorce, the court may order her a restoration of the whole or such part of her lands, and assign alimony, as they may judge proper.

Same subject.  
1821, 71, § 5.

SECT. 21. Whenever the validity of a marriage is denied or doubted, either party may file a libel for annulling the same, in like manner, as a libel for a divorce; and, upon due proof of the nullity of the marriage, it shall be declared void by sentence of said court; and, upon due proof of its validity, the court, by their decree, shall affirm the marriage.

Libel for annulling a marriage.  
1 Pick. 136.

SECT. 22. No such decree of dissolution or affirmation, shall prejudice the rights of the party, against whom the same may be passed, unless such party had been personally notified to answer to the libel, or had appeared and answered to the same.

No decree, in such case, without notice.

SECT. 23. Upon dissolution of a marriage, by divorce on sentence of nullity, on account of consanguinity or affinity between the parties, or of any marriage between a white person, and a negro, indian or mulatto, the issue of the marriage shall be deemed, to be illegitimate.

Issue, when illegitimate.

SECT. 24. If the dissolution of the marriage be on account of the non age, insanity or idiocy of either of the parties, the issue of the marriage shall be deemed to be the legitimate issue of the parent, who, at the time of the marriage, was capable of contracting marriage.

When legitimate, after divorce.  
1821, 71, § 6.  
1829, 440, § 1.

SECT. 25. When a marriage is dissolved, on account of a prior marriage of either of the parties, and it shall appear, that the second marriage was contracted in good faith, and in the full belief of the parties, that the former husband or wife was dead, that fact shall be stated in the sentence of divorce or nullity; and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be the legitimate issue of the parent, who, at the time of the marriage, was capable of contracting; and such legitimacy shall be presumed, on the same principles of evidence, as in a case where both parties were enabled to contract lawful marriage, at the time of the solemnization of the supposed marriage.

Same subject.

SECT. 26. After a libel has been filed for the dissolution of a marriage, or for a divorce from the bond of matrimony, or from bed and board, said court may, in any county, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty, during the pendency of such libel.

Court may free the wife from restraint, pending a libel.

SECT. 27. The court, when decreeing the dissolution of a marriage, or a divorce from the bond of matrimony, or from bed and board, may make such further decree, as they shall judge expedient, concerning the custody, care and maintenance of the minor

Disposal of children, on a divorce.

**CHAP. 89.** children of the parties; and may determine, with which of the parents, the children or any of them shall remain; and the court may, from time to time, revise and alter such decree, as to the custody, care and maintenance of the children; as the circumstances of all concerned may require, or render expedient.

Power of the court, as to compulsory processes. 1821, 71, § 2, 5.

**SECT. 28.** The court, in the execution of the powers given to them in this chapter, may employ such compulsory process, as they may deem proper, whether by execution or attachment, or such other form, as shall be effectual.

Decrees of other states, when void in this state. 14 Mass. 227. 1 Pick. 506.

**SECT. 29.** When an inhabitant of this state shall go into any other state or country, in order to obtain a divorce for any cause, which had occurred here, and whilst the parties resided here, or for any cause which would not authorize a divorce by the laws of this state, a divorce, so obtained, shall be of no force or effect in this state.

When valid, in this state. 9 Greenl. 140.

**SECT. 30.** In all other cases, a divorce, decreed in any other state or country, according to the law of the place, by a court having jurisdiction of the cause and of both the parties, shall be valid in this state.

Either party may have a trial by jury. 1839, 377.

**SECT. 31.** In all cases of libel for divorce from the bond of matrimony, either party shall be entitled to a trial by jury, on requesting it; and, if the jury shall find the facts, stated in the libel, to be true, and if such facts shall be sufficient, by the laws of the state, to authorize a divorce, the court shall thereupon decree a divorce, as prayed for in the libel.

Court may grant a new trial. 1839, 377.

**SECT. 32.** The justices of the supreme judicial court may, at their discretion, and on such conditions as they may impose, grant a new trial in cases of divorce, whenever they shall judge it reasonable, and whenever the parties have not lived together, since the former trial; on application of the party, aggrieved by the judgment then given; provided such new trial shall not be granted, after the lapse of three years after the former judgment.

## CHAPTER 90.

### OF MASTERS, APPRENTICES AND SERVANTS.

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| <p><b>SECT. 1.</b> Binding of minors, under fourteen years of age.</p> <p>2. Binding minors, above the age of fourteen.</p> <p>3. Indentures, in such cases.</p> <p>4. By whom indentures shall be kept.</p> <p>5. Consideration, how secured.</p> <p>6. Indentures to be binding.</p> <p>7. Void, on the death of the master.</p> | <p><b>SECT. 8.</b> Minor not to be transferred, nor transported from the state.</p> <p>9. Proceedings, for discharge of apprentice for ill treatment.</p> <p>10. Proceedings, to discharge him for misbehavior.</p> <p>11. How recovered, in case he absconds.</p> |
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Binding of minors, under fourteen years of age. 1821, 170, § 1.

**SECTION 1.** Children, under the age of fourteen years, may be bound as apprentices or servants, until that age, without their consent, by their father; if living; and if not, by their mother or legal guardian: and, if they have no parent or guardian, they may bind